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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DOMINIQUE CHANTRAIN, STEPHANE FOCANT, CHRISTIAN HUBLET, CHRISTIAN SIERENS and YVES T'JOENS

Appeal 2009-003814
Application 09/891,545
Technology Center 2400

Decided: April 16, 2010

Before JEAN R. HOMERE, THU A. DANG, and CAROLYN D. THOMAS, *Administrative Patent Judges*.

DANG, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

I. STATEMENT OF THE CASE

Appellants have filed a Request for Rehearing under 37 C.F.R. § 41.52(a)(1) (hereinafter "Request") on February 12, 2010, for reconsideration of our Decision mailed December 9, 2009 (hereinafter "Decision").

The Decision affirmed the Examiner's rejection of claims 1-13 under 35 U.S.C. § 102(e) as being anticipated by Provino.

We have reconsidered our Decision of December 9, 2009, in light of Appellants' comments in the Request for Rehearing, and we find Appellants have not identified any points misapprehended or overlooked by the Board in our Decision therein. We decline to change our prior Decision for the reasons discussed *infra*.

II. ISSUE

We address the following contentions raised by Appellants' in the Request:

Appellants contend that the issue set forth in our Decision of "whether Provino detects the message sent from the user to the communication device while the user is connected to the VPN" is framed in a way that "ignores the related claim requirement that the detected message be directed to a logical channel between the Network Access Server and the communication device, with the logical channel having a logical channel identifier identifying the VPN to which the user is connected" (Request 3). In particular, Appellants contend that "there is no suggestion at all in Provino that the logical channel used to send the message to the external device would have a logical channel identifier identifying the VPN to which the user 12(m) is connected" (*id.*). Appellants' arguments are specifically directed to claims 1-13 that stand rejected under 35 U.S.C. § 102(e) (Request 1).

The issue we address on the Request is whether Appellants have identified any points misapprehended or overlooked by the Board by addressing the issue of "whether Provino detects the message sent from the user to the communication device while the user is connected to the VPN" in our Decision.

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Appellants' Brief

1. Appellants assert that "in order for there to be anticipation, there must be a teaching in Provino that such a user is maintaining its connection to the VPN while at the same time communicating with one of these other devices" since "[t]here is no such discussion in Provino" (App. Br. 12).
2. Appellants then merely state that "there is no suggestion that the ISP 11 … will establish a logical channel to such other external device, and will use a logical channel identifier an identifier of the VPN 15" (App. Br. 13).

Examiner's Answer

3. The Examiner finds that "the returned network address to the user 12(m) [of Provino] also corresponds to the human-readable Internet address for device 13 external to the VPN 15" (Ans. 10).
4. The Examiner further finds that Provino discloses "directing said message to a logical channel between said Network Access Server and

> said communication device … wherein said logical channel has, as a logical identifier, an identifier of said host Virtual Private Network to which said user currently connected (secure channel (40, 42 and 44) is established between device 12(m) and device within VPN network 15" (Ans. 4-5). In particular, the Examiner finds that "Provino shows logical channel between device 12(m), ISP 11, Internet 14, arrows 16 'TO/FROM OTHER ISP'S' and VPN 15" (Ans. 12).

IV. PRINCIPLES OF LAW

The general allegation of patentability does not specify, as required, how the underlined language patentably distinguishes the claimed invention. This form of argument is wholly ineffective in demonstrating error in the Examiner's prima facie case to establish the patentability of the claims on appeal. *Ex parte Belinne*, Appeal No. 2009-004693, decided Aug. 10, 2009, (BPAI) (informative). Available at: http://www.uspto.gov/web/offices/dcom/bpai/its/fd09004693.pdf.

V. ANALYSIS

Though Appellants assert that our Decision "ignores the related claim requirement that the detected message be directed to a logical channel between the Network Access Server and the communication device, with the logical channel having a logical channel identifier identifying the VPN to which the user is connected" (Request 3), since "[b]oth the examiner and the Board gloss over this important requirement of the claim" (*id.*), this argument was not raised in the

Appeal Brief. Arguments not raised in the Briefs before the Board and evidence not previously relied upon in the Brief and any Reply Brief(s) are not permitted in the Request for Rehearing except as permitted by paragraphs (a)(2) and (a)(3) of this section. 37 C.F.R. ¶ 41.52(a)(1).

In the Appeal Brief, Appellants merely argue that "in order for there to be anticipation, there must be a teaching in Provino that such a user is maintaining its connection to the VPN while at the same time communicating with one of these other devices" (FF 1). Accordingly, as set forth in our Decision, "the issue that we address on appeal is whether Provino discloses 'detecting a message being sent from said user to said communication device while said user is currently connected to said host Virtual Private Network,'" as raised by Appellants in the Appeal Brief (Decision 6).

Though Appellants make a general statement in the Appeal Brief that "there is no suggestion that the ISP 11… will establish a logical channel to such other external device, and will use a logical channel identifier an identifier of the VPN 15" (FF 2), this general allegation of patentability does not specify, as required, how this repeated language of claim 1 distinguishes the claimed invention over Provino. That is, this form of argument is wholly ineffective in demonstrating error by the Examiner. *See Ex parte Belinne*, Appeal No. 2009-004693.

Contrary to Appellants' assertion that "[b]oth the examiner and the Board gloss over this important requirement of the claim" (Request 3), in the Examiner's Answer, the Examiner finds that Provino discloses the claim

requirement that the detected message be directed to a logical channel between the Network Access Server and the communication device, with the logical channel having a logical channel identifier identifying the VPN to which the user is connected (FF 3-4). In particular, the Examiner finds that Provino discloses "said logical channel has, as a logical identifier, an identifier of said host Virtual Private Network to which said user currently connected (secure channel (40, 42 and 44) is established between device 12(m) and device within VPN network 15" (FF 4). Further, as set forth in our Decision, "[t]hough Appellants also contend that Provino also does not teach that the ISP 11 'will establish a logical channel to such other external device, and will use a logical channel identifier [as] an identifier of the VPN…, the Examiner finds that 'the returned network address to the user 12(m) also corresponds to the human-readable Internet address for device 13 external to the VPN 15'" (Decision 7-8). By merely repeating the claim language, Appellants provide no convincing argument to dispute that the Examiner has correctly shown where the claimed elements appear in Provino.

Thus, we do not agree that, by addressing the issue of "whether Provino detects the message sent from the user to the communication device while the user is connected to the VPN" in our Decision, we misapprehended or overlooked any substantive argument that was raised by Appellants in the Appeal Brief. Accordingly, Appellants' Request does not persuade us to modify our Decision. Therefore, we find Appellants' arguments unavailing.

VI. CONCLUSION

We have carefully considered the points and arguments raised by Appellants in the Request for Rehearing, but find no points misapprehended or overlooked by the Board in our Decision and none of these arguments are persuasive that our original Decision was in error. We are still of the view, that the invention set forth in claims 1-13 is unpatentable over the applied prior art based on the record before us in the original appeal. This Decision on Appellants' Request for Rehearing is deemed to incorporate our earlier Decision (mailed December 9, 2009) by reference. *See* 37 C.F.R. § 41.52(a)(1).

VII. DECISION

We have granted Appellants' request to the extent that we have reconsidered our Decision of December 9, 2009, but we deny the request with respect to making any changes therein.

REHEARING DENIED

peb

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